

Rosenberg Library Association and American Federation of Teachers, AFL-CIO, Petitioner. Case 23-RC-5187

24 April 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Upon a petition filed 2 December 1983 by the American Federation of Teachers, AFL-CIO (the Petitioner or the Union), a hearing was held on 16 and 20 December 1983 before Hearing Officer Bernard D. Getto of the National Labor Relations Board. Rosenberg Library Association (the Library or the Employer) participated in the hearing.

Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, by direction of the Regional Director for Region 23 this case was transferred to the Board for decision. Thereafter the Employer and the Union filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds they are free from prejudicial error. They are hereby affirmed.

Contrary to the contentions of the Employer the Union argues that the Library is not a political subdivision within the meaning of Section 2(2) of the Act, that the Board should assert jurisdiction over the Library, and that the Board should direct an election in a unit comprised of all employees of the Library except the chief executive officer and librarian, John D. Hyatt, the office manager, the heads of 8 of the Library's 10 departments, and the guard.¹ Contrary to its position at the hearing the Union contends that a single ballot election is appropriate inasmuch as none of the requested employees is a professional under its view of the Act. For the reasons below we find that it would not effectuate the policies of the Act to assert jurisdiction over the Library and we dismiss the petition on the grounds that it is exempt as a political subdivision.

Upon the entire record in this case the Board finds:

The Rosenberg Library opened in 1904 pursuant to the terms of the will of Henry Rosenberg. Its

purpose was and is to serve as a public library and museum for the people of Galveston, Texas. In 1905 the Galveston City Council merged the Galveston City Library into the Rosenberg Library. The 20-member board of trustees established under the Rosenberg will governs the Rosenberg Library. Members of the board of trustees must be legal residents of Galveston County. The board of trustees is a self-perpetuating body in that members serve for life terms and vacancies are filled as they arise by vote of the remaining members. The trustees meet annually to elect a seven-member board of directors which carries out on a day-to-day basis the policies established by the trustees. The board of directors is responsible to the trustees and serves also as the Galveston County Library Board.

The Rosenberg Library is the headquarters library for the Galveston County Library System which consists of six library facilities in addition to the Rosenberg Library.² Operating funds for the Library are derived from city and county taxes, investments and endowments, state and Federal revenues, overdue fines, processing charges, and gifts. During the last fiscal year the Library's operating budget totaled approximately \$983,000, 75 percent of which (over \$700,000) was derived from county and city taxes (\$160,000 from the county and \$540,000 from the city), 15 percent was derived from investments and endowments, and 10 percent from Federal and state funds, fines, and gifts.

The board of directors employs a librarian who serves not only as the librarian and chief executive officer of the Rosenberg Library but also as both the city and county librarian. John D. Hyatt has served in this capacity for over 19 years. Given his multiple roles, Hyatt is responsible through the board of directors to the city council for the expenditure of city tax funds, to the Galveston County commissioners for the expenditure of county funds, to the board of trustees for the expenditure of private gifts and endowments, and to various agencies for the expenditure of state and Federal funds. In his role as county librarian Hyatt administers the County Library System for the board of directors and works with an advisory council made up of representatives of all seven libraries in the county system. This advisory council formulates policies, designs the yearly plans for services to be offered by the libraries, and works out budgets intended to fulfill the yearly plans. These items are first submitted to the board of directors for approval. The board then submits the

¹ The unit description set forth in the Petitioner's election petition requested: "All professional and non-professional employees, including librarians and assistants, clerks, custodians and maintenance. Excluded: All supervisors as defined in the Act." At the hearing the Union indicated that it was willing to proceed in an election in any unit found to be appropriate.

² The other members of the County Library System are the LaMarque Public Library, the League City Public Library, the Dickinson Public Library, the Friendswood Public Library, the Hitchcock Public Library, and the Sante Fe Public Library.

budget requests to the county judge who, together with the county auditor, works up a budget proposal for consideration by the county commissioners. The commissioners hold a series of public hearings and ultimately determine the amount of county moneys which will be allotted to the Library.

The county controls how and for what purposes its funds are spent through its approval of the line-item budget request. Most of the county tax dollars are expended for materials and supplies required by the Library. No county tax funds are permitted to be used for salaries of Library personnel.³

Under the terms of the Galveston City charter, the city provides the Library with an amount of money equal to 5 cents per \$100 of real estate valuation in the city. No line-item budget request is required from the Library to the city council unless the Library is seeking more than the established 5 cents per \$100 minimum tax allotment. However, if the Library wants more than this minimum, it must request it through a specific budget proposal which the city council can accept or reject. In either case, each year the Library provides the city with an audit of the completed year's expenditures so the city can be assured that its funds were used appropriately.⁴

In addition, as a member of the Texas State Library, the Library must report to that body every year regarding its activities in order to qualify for state moneys and Federal grants. For example, the Library must provide information on its hours of operation in order that the State can assure that it is open the required minimum number of hours; it must provide information regarding its staffing levels and the qualifications of its employees; and it must even inform the State about the number of people who attend meetings in various meeting rooms of the Library. Similar reports are required of the Library to the Houston Area Library System which also has a role in the distribution of certain federally provided benefits in which the Library shares as a member of the system. Yet another source of Federal funds exists through certain grants—in the coming year expected to amount to \$6000—which are channeled through the Texas State Library to the city of Galveston.

³ The sole exception to this is the Library's extension department which is funded almost totally by the county. The only other source of extension department revenues is a small endowment for library services to elderly homebound individuals. The salaries of nearly all other Library employees come from city funds.

⁴ Hyatt testified that the city council has carefully examined the Library's use of city-dispersed funds and that it "questioned . . . very seriously" the Library's perceived over-generosity with regard to employee fringe benefits. Hyatt stated that the council's approval of any request for more than the minimally established amount would depend on its approval of such Library policies.

The purposes for which these funds are used must receive the prior approval of the Galveston city manager.

While the wages and benefits of Library employees are not the same as those of city or county employees, the board of directors reviews the city and county wage and benefit scales in formulating the rates for Library personnel. Testimony established that the Library was rarely able to match the city or county pay levels, but that it did attempt to follow a pay scale which reflected the relative differences between comparable job classifications at the city and county levels. Allocations for mileage and travel expenses parallel those established by the city, except for the county-funded extension department which follows the county guidelines. Library employees are eligible to participate in the Galveston City Employees Credit Union.

In deciding whether to assert jurisdiction over the Library, the Board must determine whether the Library constitutes an employer as defined by the Act or whether, as the Library asserts, it falls within the political subdivision exception under Section 2(2) of the Act. The political subdivision exception was defined by the Supreme Court in *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*⁵ as including those "entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate."

The Board has previously applied this *Hawkins* definition to a public library. In *Jervis Public Library Assn.*⁶ the Board majority dismissed a petition for an election among that Library's employees, finding that the degree of governmental operating and budgeting control coupled with the history of the institution as a state-authorized educational facility were sufficient to characterize the library as an agent of the State of New York or, in the language of the *Hawkins* decision, "an 'administrative arm' of the State in providing educational services to the public."⁷ The Jervis Library had been admitted as part of the University of the State of New York for over 85 years; operated under the state commissioner of education's regulations; received substantial city and state funding; was subject to significant control by the city and the state by virtue of their budgetary oversight authority; and its employees were participants in a state retirement system as well as a city insurance plan.

⁵ 402 U.S. 600, 604-605 (1971).

⁶ 262 NLRB 1386 (1982).

⁷ *Id.* at 1388.

We find significant similarities between the situations in the *Jervis* case and the instant one. The Rosenberg Library operates under Texas State Library regulations and must verify its compliance with such regulations on a regular basis. The Library is heavily dependent on city, county, state, and Federal tax moneys as sources for operating funds. Of its total budget 75 percent is derived from city and county funds alone. While the city charter specifies the Library's minimum yearly funding entitlement, with only a postexpenditure audit to verify the proper allocation of tax resources, any need for money above this designated funding level must be submitted as a formal line-item budgetary request to the city council. In either event the Library is answerable to the city for its expenditure of city-collected tax revenues and therefore is subject to city council approval of its policies. With regard to county funding the Library must prepare and submit annual line-item budget requests to the county judge and the county commissioners for action and approval. The Rosenberg Library's board of directors and its librarian serve also as the county library board and the county librarian. Given these dual responsibilities, the librarian must ensure that all seven libraries which comprise the County Library System comply with the requirements for participation in that system—including employee qualifications, staffing, hours, and funding. In addition to these duties the Rosenberg Library librarian serves as the

Galveston city librarian. The Rosenberg Library operates as a public facility to serve the needs of both city and county residents alike. Finally, the Library is a part of the Houston Area Library System which also establishes certain standards for employee qualifications, staffing, hours, and funding (from state and Federal sources). Clearly, therefore, the Rosenberg Library is administered by individuals who are responsible to public officials—the county judge, county commissioners, city council, the city manager, and the Texas state librarian—or the general electorate which ultimately, through public hearings and possible ballot referenda concerning tax assessments, control the Library's budgetary and operational policies.⁸

Accordingly, we shall dismiss the petition herein.⁹

ORDER

The petition is dismissed.

⁸ Member Zimmerman dissented in *Jervis Public Library Assn.*, *supra*, and does not rely on that case here. He agrees with his colleagues, however, that the Library meets the definition of an exempt political subdivision because it is administered by individuals—the board of directors and the librarian—who are responsible to public officials or to the general electorate.

⁹ In view of our finding that the Library is exempt as a political subdivision we find it unnecessary to determine whether the Employer has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization as their representative.

Member Hunter does not subscribe to the so-called "right of control" test. See his dissenting opinion in *Wordsworth Academy*, 262 NLRB 438 (1982).